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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/877,549

06/08/2001

Michael Florence

50588/170

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32641 7590 01/11/2008  
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EXAMINER

SALCE, JASON P

ART UNIT

PAPER NUMBER

2623

MAIL DATE

DELIVERY MODE

01/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/877,549	<b>Applicant(s)</b> FLORENCE, MICHAEL	
	<b>Examiner</b> Jason P. Salce	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-7, 9-15, 17-19, 21-26, 28-35, 79, 82 and 85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5-7, 10-15, 17-19, 22-26, 28-30, 32-34, 79, 82 and 85 is/are allowed.
- 6) ☒ Claim(s) 9, 21, 31 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/1/2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 21 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bedard (U.S. Patent No. 5,801,747) in view of Eldering et al. (U.S. Patent No. 7,240,355).

Referring to claim 9, Bedard discloses a method for generating a list of favorites (see **Figure 3**) in an interactive television system (see **Figure 4**).

Bedard also discloses receiving a first notification, the first notification indicating a first channel activity (see **step 300 in Figure 3 and Column 5, Lines 34-36**).

Bedard also discloses receiving a second notification, the second notification indicating a second channel activity (**see step 302 in Figure 3 and Column 5, Lines 36-37**).

Bedard also discloses calculating a time difference between the first and the second notification (**see step 304 in Figure 3 and Column 5, Lines 37-42**).

Bedard also discloses updating a channel favorites table based on the calculated time difference, wherein the updating is performed if and only if the calculated time difference is larger than a threshold, wherein the threshold is ten seconds (**see step 312 in Figure 3 and Column 5, Lines 49-55 and Column 3, Line 63 through Column 4, Line 14, which actually teaches that updating is performed if the calculated time difference is larger than about ten seconds (see Column 4, Lines 7-12 for the calculated time different being larger than ten seconds (1, 5, 10 or 15 minute durations))**)).

Eldering also teaching filtering viewed programs based on the amount of time the program had been watched and that a time threshold can be a few seconds (**see Column 2, Lines 17-45 and Column 7, Lines 44-56**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the filtering process, as taught by Bedard, using the refined filtering process, as taught by Eldering, for the purpose of generating and storing subscriber characteristics that reflect the probably demographics and preferences of the subscriber and household (**see Column 1, Line 67 through Column 2, Line 2 of Eldering**).

Although Bedard or Eldering in combination specifically teach that the threshold beings at ten seconds, Bedard and Eldering provide evidence to show that any time from 3 seconds to 15 minutes can be used as a threshold for recording viewing activity of a program into a user profile.

Therefore, by teaching that the value of 10 seconds could exist as starting value for a threshold in determining which channels can be stored in a favorite channel table, it would have obvious to a person of ordinary skill in the art to use this specific value of 10 seconds in order to calculate a time difference that is larger than a threshold that beings at ten seconds, where a reasonable expectation of success would be achieved (by acquiring a favorite channel list that the user prefers to watch). See the Supreme Court Decision in KSR International Co. v. Teleflex Inc.

Referring to claims 21 and 31, see the rejection of claim 9.

4. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bedard (U.S. Patent No. 5,801,747) Eldering et al. (U.S. Patent No. 7,240,355) in further view of Alexander et al. (U.S. Patent No. 6,177,931).

Referring to claim 35, see the rejection of claim 1 (above) for Bedard and Eldering teaching the favorite program channel table accumulation, calculation and display method. Bedard also teaches a "push" model for accessing an external source of information (see Column 8, Lines 51-63).

However, Bedard and Eldering are silent as to the creation of the favorite channel list being performed at a server.

Alexander discloses that the processing can be performed at either locally or remotely (at a television headend) at Column 28, Line 10 through Column 30, Line 58.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the local (set-top box) calculation of the favorite channel list, as taught by Bedard and Eldering, to be performed at a server (television headend), as taught by Alexander, for the purpose of providing improved features to the EPG display and navigation (see Column 2, Line 8 of Alexander).

#### ***Allowable Subject Matter***

Claims 1-3, 5-7, 10-15, 17-19, 22-26, 28-30, 32-34, 79, 82 and 85 are allowed.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
09/877,549  
Art Unit: 2623

Page 6

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason P Salce  
Primary Examiner  
Art Unit 2623

January 4, 2008

A handwritten signature in black ink, appearing to read "Jason Salce", is written over the typed name and title.